

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
2012 Biennial Regulatory Review of	)	
Regulations Administered	)	WC Docket No. 13-33
By the Wireline Competition Bureau	)	

**COMMENTS OF CENTURYLINK**

**I. INTRODUCTION AND SUMMARY**

CenturyLink submits these comments in response to the Federal Communications Commission's (Commission) February 5, 2013 *Public Notice* seeking comments as part of its 2012 Biennial Review of Telecommunications Regulations.<sup>1</sup>

Pursuant to Section 11 of the Telecommunications Act of 1996 ("1996 Act"), the Commission is tasked, in every even-numbered year, to identify and repeal or modify any regulation that is "no longer in the public interest as the result of meaningful economic competition between the providers of such service."<sup>2</sup> The statute sets forth a very straightforward standard for the Commission, *i.e.*, ascertain the state of economic competition for the particular service being regulated and determine if said competition is "meaningful."<sup>3</sup> If it is, then the regulation(s) must be repealed or modified.

For the reasons articulated in more detail below, CenturyLink urges the Commission to do the following as part of its 2012 Biennial Review: 1) eliminate remnants of its *Computer*

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<sup>1</sup> See *Public Notice*, "The Commission Seeks Public Comment in the 2012 Biennial Review of Telecommunications Regulations," FCC 13-17, rel. Feb. 5, 2013.

<sup>2</sup> 47 U.S.C. § 161.

<sup>3</sup> See also, *Cellco Partnership v. FCC*, 357 F.3d 88, 98 (holding that Section 11 requires that the Commission "reevaluate regulations in light of current competitive market conditions to see that the conclusion [it] reached in adopting the rule -- that [the rule] was needed to further the public interest -- remains valid.").

*Inquiry* regulations, including the BOC-specific comparably efficient interconnection (CEI) and open network architecture (ONA) requirements; 2) eliminate its continuing property records (CPR) requirements found in Commission Rule 32.2000; and (3) modify Rule 32.26's materiality standard to follow generally accepted accounting practices (GAAP).

For many, if not all, of the rules CenturyLink that requests be modified or repealed, the Commission has already made the determinations that form the core of the factors crucial to the standard set by Section 11, *i.e.*, the presence of meaningful competition that renders the rule no longer in the public interest. Thus, CenturyLink is merely asking that the Commission take the next logical steps based on those determinations.

## **II. THE COMMISSION SHOULD DISCONTINUE REMNANTS OF ITS *COMPUTER INQUIRY* REGIME, INCLUDING ITS BOC-SPECIFIC ONA AND CEI REQUIREMENTS**

The time has come for the Commission to eliminate certain remnants of its *Computer Inquiry* regulations. This includes the BOC-specific CEI and ONA requirements, the structural separation requirements contained in Section 64.702 of the Commission's rules, and the legacy rule for facilities-based wireline carriers.<sup>4</sup>

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<sup>4</sup> See, *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Notice of Inquiry, 7 FCC 2d 11 (1966) (*Computer I NOI*); *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Final Decision and Order, 28 FCC 2d 267 (1971) (*Computer I Final Decision*), *aff'd in part sub nom. GTE Service Corp. v. FCC*, 474 F.2d 724 (2d Cir. 1973), *decision on remand*, 40 FCC 2d 293 (1973) (*Computer I*). See *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384 (1980) (*Computer II Final Decision*), *recon.*, 84 FCC 2d 50 (1980) (*Computer II Reconsideration Order*), *further recon.*, 88 FCC 2d 512 (1981) (*Computer II Further Reconsideration Order*), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982) (*CCIA v. FCC*), *cert. denied*, 461 U.S. 938 (1983) (collectively referred to as *Computer II*); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Computer III Phase I Reconsideration Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Computer III Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Computer III Phase I Second Further*

Long ago, the 1996 Act significantly diminished the need for the *Computer Inquiry* requirements because competitors became able to obtain unbundled access and interconnection via Sections 251, 252 and 271 of the Act.

The Commission has also previously eliminated numerous aspects of its *Computer Inquiry* framework, finding in each instance that these obligations imposed unnecessary burdens.<sup>5</sup> In doing so, it recognized that these rules impede the ability of carriers to develop and deploy innovative products that respond to market demands and reduce their incentive and

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*Reconsideration Order*); *Phase I Order and Phase I Recon. Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Computer III Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, CC Docket No. 90-368, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied sub nom. California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*), *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 6040 (1998) (*Computer III Further Remand Further Notice*); Report and Order, 14 FCC Rcd 4289 (1999) (*Computer III Further Remand Order*), *recon.*, 14 FCC Rcd 21628 (1999) (*Computer III Further Remand Reconsideration Order*).

<sup>5</sup> See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises, Consumer Protection in the Broadband Era*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005), *aff'd sub nom.*, *Time Warner v. FCC*, 507 F.3d 205 (3<sup>rd</sup> Cir. 2007) (*Wireline Broadband Order*). See also *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, Memorandum Opinion and Order, 23 FCC Rcd 12260 (2008) (*Qwest Enterprise Forbearance Order*).

ability to invest in and deploy broadband infrastructure investment. These realizations, for example, led the Commission, in the *Qwest Enterprise Forbearance Order*, to forbear in 2008 from application of BOC-specific *Computer Inquiry* rules to Qwest's enterprise broadband services.<sup>6</sup> In that proceeding, the Commission determined that the BOC-specific *Computer Inquiry* requirements for those services were not needed to ensure that the charges or practices associated with them are just, reasonable, and not unreasonably discriminatory.<sup>7</sup> It also found that forbearing from those rules for those services served the public interest.<sup>8</sup> Specifically, it found that the *Computer III* ONA and CEI requirements "unnecessarily constrain[ed]" how Qwest may offer its broadband transmission services to its enterprise customers.<sup>9</sup> The Commission also recognized that "[r]emoving these unnecessary constraints will promote competitive market conditions by increasing the competitive pressure on all enterprise services providers. . . [and] will increase Qwest's incentives to invest in advanced network technologies that will enable it to provide enterprise customers with increasingly innovative services."<sup>10</sup>

More recently, the Commission eliminated reporting requirements associated with the BOCs' CEI and ONA obligations.<sup>11</sup> In doing so, the Commission acknowledged once again its prior observations that no party identified any utility to any service provider for these reports and

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<sup>6</sup> *Qwest Enterprise Forbearance Order*, 23 FCC Rcd at 12289 ¶ 56.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 12286-87 ¶ 49.

<sup>9</sup> *Id.* at 12289 ¶ 58.

<sup>10</sup> *Id.*

<sup>11</sup> *Review of Wireline Competition Bureau Data Practices; Computer III Further Remand Proceedings; Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, Order, 26 FCC Rcd 11280 (2011).

filings that BOCs must generate to comply with ONA and CEI, and that the Commission does not rely on any of these submissions in the course of its decision making.<sup>12</sup>

For all these same reasons, the Commission should now eliminate other remnants of its *Computer Inquiry* rules. The CEI and ONA requirements continue to require BOCs to maintain arcane regulatory processes which require tremendous resources for benefits that the Commission has repeatedly recognized are greatly diluted if not altogether non-existent. By way of example, the CEI plan requirement provides a BOC's competitors an undue advantage and provides disincentives to BOC innovation in the information service area. And, the ONA rules impose similarly unnecessary obligations despite the fact that the demand for ONA services is and always has been low.<sup>13</sup> The *Computer III* CEI and ONA rules were imposed based on prior Commission findings that its prior regime -- its *Computer II* structural separation requirements -- were no longer needed.<sup>14</sup> Thus, as the Commission eliminates CEI and ONA rules, it should also eliminate the Section 64.702 structural separation requirements. Similarly, the Commission should eliminate the facilities-based wireline carrier *Computer Inquiry* rule -- requiring that wireline carriers that own common carrier transmission facilities and provide enhanced services "acquire transmission capacity pursuant to the same prices, terms, and conditions reflected in their tariffs when their own facilities are utilized..." and permit other enhanced service providers "to use such a carrier's facilities under the same terms and conditions."<sup>15</sup> Telecommunications

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<sup>12</sup> *Id.* at 11280-81 ¶¶ 2-3.

<sup>13</sup> See, e.g., USTA 2006 Biennial Review Comments, WC Docket No. 06-157, filed Sept. 1, 2006 at 18-19 (USTA 2006 Biennial Review Comments) (noting that Verizon only received a handful of requests for ONA services in the past decade and that ISPs appear to be getting their necessary services outside of the ONA requirements; AT&T has been unable to discern any use of the ONA reports); Peter W. Huber, *et al.*, *Federal Telecommunications Law* at § 5.4.6 (2<sup>nd</sup> ed. 1999).

<sup>14</sup> See, generally, *Computer III Phase I Order*.

<sup>15</sup> See *Computer II Final Decision*, 77 FCC 2d at 474-75 ¶ 231.

services are either tariffed on the federal or state level, or they have been deemed competitive enough that they are deregulated. Thus, CEI plans, by which BOCs must identify available telecommunications service inputs for certain information services -- in addition to demonstrating how they will use those inputs to provide information services (which by definition are competitive and unregulated), are entirely unnecessary today.<sup>16</sup> So too are these other remnants of the Commission's *Computer Inquiry* rules discussed above.

### **III. THE COMMISSION'S CONTINUING PROPERTY RECORDS REQUIREMENTS ARE OUTMODED AND UNNECESSARY**

The Commission's continuing property records (CPR) requirements found in Rule 32.2000 should be eliminated.<sup>17</sup> The CPR rules are a vestige of rate-of-return regulation and serve no purpose in price-cap regulation because the property records and associated accounting costs do not impact interstate rates in a price-cap regime. Furthermore, these rules are not necessary for accurate recordkeeping regarding incumbent local exchange carrier (ILEC) assets. If the CPR rules are eliminated, CenturyLink will continue to follow GAAP principles. In addition, CenturyLink will remain subject to Sarbanes-Oxley requirements, the Foreign Corrupt Practices Act, federal and state income tax statutes and rules, and property tax statutes and rules.<sup>18</sup> For instance, income and property tax accounting rules require detail such as vintage, asset classification, location and book basis. In some areas, such as buildings, CenturyLink's

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<sup>16</sup> *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order, 6 FCC Rcd 7646 (1991); *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 97 (1993); *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 2606 (1993).

<sup>17</sup> 47 C.F.R. § 32.2000.

<sup>18</sup> *Ex parte* Letter from Ms. Melissa E. Newman, Vice President -- Federal Regulatory, Qwest to Mr. Jeffrey Carlisle, Bureau Chief, Wireline Competition Bureau, CC Docket No. 99-301, filed Feb. 3, 2005 at 3.

internal accounting practices utilize greater asset detail than that required under Part 32 of the Commission's Rules.

In 2001, the Commission tentatively concluded that the CPR rules were ill-suited for price-cap regulation and imposed substantial burdens on ILECs such that they should be eliminated in three years.<sup>19</sup> Yet, twelve years later, the rules are still on the books. Not only would eliminating these rules lift many time and resource-intensive burdens from ILECs, but it would increase their responsiveness and flexibility. ILECs will be able to modify their property records to respond to changing internal and external conditions without waiting for rule changes. ILECs will also be able to adopt more efficient and effective accounting processes and systems without first seeking and obtaining rule revisions.

CenturyLink urges the Commission to eliminate its CPR rules which by everyone's admission, including the Commission, serve no purpose and impose significant burdens.

#### **IV. THE COMMISSION SHOULD MODIFY THE MATERIALITY STANDARD FOR RULE 32.26**

The Commission should modify Rule 32.26<sup>20</sup> to establish a materiality standard in line with GAAP. USTA, in its comments during the 2006 Biennial Review, referenced an *ex parte* filing by Ernst & Young which noted that "materiality is an established, well-developed accounting concept that allows auditors to focus on meaningful errors and to make a qualitative assessment of the importance of such errors, from the perspective of the users of the statement at

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<sup>19</sup> 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911, 19987 ¶ 212 (2001).

<sup>20</sup> 47 C.F.R. § 32.26.

issue.”<sup>21</sup> Using a materiality standard in accord with GAAP “would enable ILECs and their auditors to efficiently prepare and audit ILEC accounts, and would result in a more useful product for the Commission and its staff.”<sup>22</sup>

Once again, CenturyLink is simply asking that the Commission take a step that it previously was prepared to take. In the Wireline Competition Bureau’s Staff Report in the 2006 Biennial Review, Staff recommended that Rule 32.26 be modified to reflect a materiality standard rooted in GAAP.<sup>23</sup> The Staff noted that the Commission was already considering modifying Rule 32.26 based on the petition seeking modification of RAO 12. Staff noted that based on comments filed in the Biennial Review proceeding, it might no longer find that Rule 32.26 as implemented through RAO 12 to be necessary in the public interest as a result of increased competition and that the Commission consider revising the rule in the RAO 12 proceeding. This proceeding provides the perfect opportunity for the Commission to apply Staff’s recommendations so that the rule would properly reflect the competitive nature of the market and therefore remain in the public interest.

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<sup>21</sup> See USTA 2006 Biennial Review Comments at 11-12, n. 32, citing *ex parte* Letter from Deena Clausen, Ernst & Young, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-532, filed July 25, 2006.

<sup>22</sup> *Id.*

<sup>23</sup> *Federal Communications Commission 2006 Biennial Regulatory Review*, Report, 22 FCC Rcd 2803, 2809 ¶ 15 and Recommendation at 2817 (2007).



## V. CONCLUSION

For the foregoing reasons, and based on determinations the Commission has already made in other proceedings, CenturyLink urges the Commission to repeal or modify the rules and regulations consistent with CenturyLink's recommendations above.

Respectfully submitted,

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